Reinforcing Iron Workers, Local 426, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO *and* Associated Cement Contractors of Michigan and Angelo Iafrate Company and Laborers Local 334, Laborers International Union of North America, AFL–CIO. Case 7–CD–425

26 August 1983

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following the filing of a charge by Associated Cement Contractors of Michigan, herein called the Association, alleging that Reinforcing Iron Workers, Local 426, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, herein called Iron Workers, has violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring Angelo Iafrate Company, herein called the Employer, to assign certain work to employees represented by Iron Workers rather than to employees represented by Laborers Local 334, Laborers International Union of North America, AFL–CIO, herein called Laborers.

Pursuant to notice, a hearing was held before Hearing Officer Carol McCloskey on 2, 3, and 16 December 1982 and 7 and 14 January 1983. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Association and Iron Workers each filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Based upon the entire record in this case, and the briefs of the parties, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The Employer is engaged in the construction industry as an excavation and concrete subcontractor, with its principal offices located in Detroit, Michigan. It annually purchases goods and materials valued in excess of $50,000 directly from points outside the State of Michigan.

We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Iron Workers and Laborers are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute consists of the placing and pulling of reinforced wire mesh in flat concrete surfaces at inside construction sites.[1]

B. *Background and Facts of the Instant Dispute*

The Employer's business consists of excavation and concrete work, including concrete floors and roadwork. Since at least August 1978, the Employer has been bound by the contract entered into by the Association and Laborers Local 334 and 1076, which covers all cement work. Generally, the nature of the work requires the laborers first to fine grade the sub-base, grading the sand off in preparation for the placement of the concrete. They then compact the base with a vibratory compactor, and add rails and forms to hold the cement in place. A vapor barrier is laid down, wire mesh is cut and laid, and the cement is poured and raked in. The mesh is then pulled up to a designated level and the surface is smoothed over.

In late summer 1982,[2] the Employer drew up and submitted a bid for cement work at the Farmer Jack store in Plymouth, Michigan, to Nova, another subcontractor. The general contractor, Holtzman & Silverman, awarded the contract to Nova, which in turn awarded the cement work to the Employer. When the work began in the fall, the Employer assigned all work to its employees who were represented by Laborers Local 334 and 1191.[3]

In the latter part of October, Joseph Lauwers, president and business agent for Iron Workers, heard that certain reinforcing work was being done at the site by employees who were not represented by Iron Workers. Lauwers stopped by the site and

[1] The parties draw a distinction between road, sidewalk, and parking lot work, and "inside" or indoor work. It is only this latter category which is in dispute.

[2] All dates herein are in 1982, unless otherwise indicated.

[3] It also appears that some of the Employer's employees are "cement finishers" represented by another union.

spoke with Olley Reynolds, the field representative for Laborers, who indicated that Laborers did not have a contract with Nova for the cement work.[4] Reynolds and Lauwers went to the office on the site and telephoned Dominic Iafrate, the Employer's vice president.[5] Reynolds indicated to Iafrate that because the work was not being performed pursuant to a contract with the Association, Laborers had no claim to the work. Lauwers then spoke with Iafrate and informed him that the work belonged to employees represented by Iron Workers. Iafrate responded that he had prepared the bid using figures for laborers, that the job was assigned to employees represented by Laborers, and that they were going to do the work. Lauwers said that it would not happen, and that he would put up a picket line if Iafrate tried to use employees represented by Laborers. Iafrate immediately called Eugene Crowley, the agent for Laborers International, who contradicted Reynolds' statement and affirmed that Laborers was definitely claiming the work.

Sometime after his conversation with Iafrate, Lauwers again came to the site and spoke with Michael Gleason, who identified himself as a superintendent for the Employer, Iafrate Company. Lauwers stated his claim to the wire mesh work going into the floor at the site. Gleason apologized, but declared that the work was being assigned to employees represented by Laborers. Lauwers responded that there was no way the Employer would be putting the mesh in, and that Iron Workers would picket. After Gleason reaffirmed his initial response, Lauwers left.

On the morning of 2 November, six or seven representatives of Iron Workers came to the jobsite, and picketed with signs which bore the legend "Notice to the public: Nova does not have a contract with Local 426 [Iron Workers]." Lauwers explained that the picketers did not begin to picket until about 7 a.m., when employees they believed were working for Nova came to the site. The picketing continued until approximately 10 a.m., when the individuals who were performing the concrete work left the site. The picketers returned the next morning, but did not picket because the cement contractor did not show up.

On the day the picketing began, several individuals told Iafrate that Iron Workers would have no claim to the work if the Employer was a member of the Association. The next day, the Employer joined the Association. Iafrate asked the executive secretary of the Association, Joseph Simoncini, to call Lauwers and ask that Iron Workers remove the picket line. Iafrate also called Lauwers, and requested that the picket line be removed. Lauwers refused, claiming that the work belonged to Iron Workers. Lauwers added that he had spoken with the general contractors, who had indicated that they would not wait for the Employer to resolve the dispute and perform the work. Lauwers gave Iafrate the name of a local subcontractor who used employees represented by Iron Workers, suggesting that Iafrate call and subcontract the mesh work. Lauwers also indicated that the picket line would stay up until the Employer used employees represented by Iron Workers, or until the Employer subcontracted the work to another employer who did.

Finding that there was no other way to resolve the dispute quickly, the Employer subcontracted the mesh work to the employer recommended by Lauwers.

C. *Contentions of the Parties*

The Employer and the Charging Party contend that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated, and that the Board shoud make an award of the work to employees represented by Laborers. They contend that the basis of this award should be the contract between the Employer and Laborers, the Employer's preference, area practice, efficiency, relative skills, and economy. The Employer and the Charging Party also seek an award which is coextensive with the geographical jurisdiction of Iron Workers because of Iron Workers' consistent efforts to secure this work for employees it represents.

Iron Workers contends that this case is not properly before the Board; that, if an award is made, it should be made to Iron Workers; and that the award should be limited to the jobsite in issue.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As is clear from the discussion above, there is evidence that Iron Workers threatened to picket, and actually did picket to force the Employer to assign the work to employees it represented.[6] Fur-

[4] Apparently, there was some confusion over precisely which company, Nova or the Employer, was performing the work at the site.

[5] Iafrate is also Nova's secretary.

[6] Iron Workers made a motion to quash the notice of hearing. Its contention rests upon the assertion that it did not know which company had

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ther, there is no evidence that the parties have agreed upon a method for the voluntary adjustment of the dispute.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to various factors.[7] The Board has held that its determination in a jurisdiction dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[8]

The following factors are relevant in making the determination of the dispute before us:

1. Board certification and collective-bargaining agreements

There is no evidence that any of the labor organizations involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees. The Employer and the Association had a collective-bargaining agreement with Laborers covering all cement work, including the work in dispute. At the time of the hearing, this agreement was being renegotiated in certain particulars.[9] Neither the Association nor the Employer had a contract with Iron Workers.[10] Inasmuch as there was and continues to be a collective-bargaining relationship between Laborers, the Employer, and the Association, and there is a history of the work in dispute being performed by laborers pursuant to that relationship, we find that this factor favors an award to employees represented by Laborers.

2. Employer assignment and preference

The Employer has consistently assigned the work to employees represented by Laborers, and concededly prefers to maintain that assignment.[11] This factor therefore favors an award to employees represented by Laborers.

3. Area practice

Evidence concerning area practice is mixed. It appears that the Employer and the Association members customarily award the work in dispute to employees represented by Laborers, while other employers in the Detroit area which are members of the Associated General Contractors award the work to employees represented by Iron Workers, pursuant to their contract with Iron Workers. There is some evidence that Associated General Contractors members perform a significantly greater amount of construction work than do members of the Association, but the evidence is not clear that they do the same type of construction work; thus a comparison would not be profitable.[12] Accordingly, we find that this factor does not favor an award to either group of employees.

4. Relative skills

The record shows that employees represented by Iron Workers receive extensive training in the placement of all types of reinforcing materials, including wire mesh. Laborers, on the other hand, receive on-the-job training in this specific task. Iron Workers' extensive training to some degree favors an award to employees represented by Iron Work-

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the contract to perform the work, and that the Employer "created" the dispute by joining the Association. We find these arguments to be unpersuasive, and deny the motion to quash.

As to the first, there is evidence that Iron Workers knew late in October which company was performing the work. The Employer's superintendent, Michael Gleason, testified that he identified himself to Lauwers as working for the Employer when Lauwers pressed Iron Workers' claim to the mesh work. Further, the statute does not require that a labor organization know the precise identity of the employer it is seeking to pressure for a work assignment. On the contrary, Sec. 8(b)(4)(D) of the Act makes it an unfair labor practice for a labor organization, *inter alia*, to threaten, coerce, or restrain *any person* engaged in commerce or in an industry affecting commerce in order to force a work assignment. Iron Workers' actions clearly meet this standard, and its alleged mistaken belief regarding the Employer's precise identity is immaterial.

As to the second assertion, that the Employer "created" the dispute by joining the Association, a contention which is analytically puzzling, the record shows that the dispute antedated that action. Crowley, Laborers International representative, demanded the work on behalf of employees represented by Laborers in late October, before the Employer joined the Association on 3 November. *Teamsters, Local 107 (Safeway Stores*, 134 NLRB 1320 (1961), cited as support by Iron Workers, is wholly inapplicable. In *Safeway*, the employer discharged three employees and reassigned their work to other employees. The Board quashed the notice of hearing, finding that the "real dispute [was] wholly between [the union] and Safeway and concern[ed] only [the union's] attempt to retrieve the jobs of its members, jobs which had been secured for more than 10 years by a series of collective-bargaining agreements until Safeway suddenly terminated the bargaining relationship . . . ." *Id.* at 1323. Here, employees represented by Iron Workers did not have jobs with the Employer which Iron Workers could seek to "retrieve." Contrary to Iron Workers' contentions, the facts of this case present a classic jurisdictional dispute: the Employer is faced with demands from competing groups for the same work. Therefore, the case is properly before the Board for resolution.

[7] *NLRB v. Electrical Workers IBEW Local 1212* [*Columbia Broadcasting System*], 364 U.S. 573 (1961).

[8] *Machinists, Lodge No. 1743 (J.A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[9] It appears that the parties were trying to revise certain pension provisions.

[10] There was some indication that there had been a contract some years ago for certain jobs, but these contracts had apparently not been renewed.

[11] The sole exception is, of course, when Iron Workers forced the Employer to subcontract the work at the site in Plymouth.

[12] The evidence seems to indicate that the Associated General Contractors members perform heavier industrial construction work.

ers. However, there is evidence that the task is not a difficult one. The blueprints for each job detail the nature, size, and location within the concrete of the mesh to be used. Moreover, the tools used in the placement of the mesh are fairly simple ones: a tape measure, pliers, a wire cutter, and a hook used to raise the mesh. Balancing these various considerations, we find that this factor does not favor an award to either group of employees.

5. Economy and efficiency

The evidence reveals that the laying and placement of wire mesh constitutes from 3 to 5 percent of the total job of placing the concrete. All other tasks to be performed, including the grading; placing the vapor barrier, railing, and forming; pouring the concrete, raking it in, and smoothing it over, are performed by employees represented by Laborers aided to a certain degree by cement finishers. None of these additional tasks would be performed by employees represented by Iron Workers. Thus, an award to employees represented by Laborers would promote efficiency and economy inasmuch as they could work continuously performing the series of tasks involved, rather than standing around, as employees represented by Iron Workers would, waiting to place the mesh. Moreover, laborers, unlike ironworkers, clean the tools used and return them to an appropriate place. Accordingly, we find that this factor favors an award to employees represented by Laborers.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Laborers are entitled to perform the work in dispute. We reach this conclusion relying on the ongoing collective-bargaining relationship between the Employer, the Association, and the Laborers; the Employer's assignment and preference; and economy and efficiency of operations. In making this determination, we are awarding the work in question to employees who are represented by Laborers, but not to that Union or its members.

Scope of the Determination

The Employer and the Charging Party urge that the Board issue an award which would encompass all future sites within Iron Workers' geographic jurisdiction at which the Employer and/or the Charging Party would perform the work in dispute.

The Board has in the past granted a broad award encompassing the geographic area in which an employer does business, wherever jurisdictions of the competing unions coincide, in circumstances where there is an indication that the dispute is likely to recur.[13] At the hearing, Iron Workers conceded that this same dispute has been a recurring one over the past several years, and that the parties have been involved in "case after case after case" because the Association will not recognize Iron Workers' jurisdictional claims to the mesh work. Given this conceded long history of disputes, the lack of any indication that Iron Workers will abandon its claim to the work, and the fact that reasonable cause exists to find that Iron Workers here resorted to illegal pressure to force the assignment of the mesh work,[14] we find that a broad award is appropriate.[15]

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Angelo Iafrate Company and of other members of the Associated Cement Contractors of Michigan who are currently represented by Laborers Local 334, Laborers International Union of North America, AFL-CIO, are entitled to perform the work of placing and pulling reinforced wire mesh in flat concrete surfaces at inside construction sites within the geographical jurisdiction of Reinforcing Iron Workers, Local 426, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO.

2. Reinforcing Iron Workers, Local 426, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Angelo Iafrate Company or other members of the Associated Cement Contractors of Michigan to assign such work to ironworkers who are represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Reinforcing Iron Workers, Local 426, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, shall notify the Regional Director for Region 7, in writing, whether or not it will refrain from forcing or requiring the Employer or other

[13] *Local 11, Electrical Workers (ITT Communications Equipment & Systems)*, 217 NLRB 397 (1975); *Electrical Workers Local 26 (Taylor Woodrow Blitman Construction)*, 195 NLRB 261 (1972).

[14] Cf. *Electrical Workers, Local 104 (Standard Sign & Signal Co.)*, 248 NLRB 1144, 1148 (1980).

[15] Although we find the history of disputes concerning the work in question sufficiently established by the admission, we note that the record would have been more fully developed had specific testimony regarding the earlier disputes been submitted.

members of the Associated Cement Contractors of Michigan, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to ironworkers represented by it.